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OFFICE OF PETITIONS

In re Patent No. 7,638,228 : DECISION ON REQUEST  
Minter et al. : FOR  
Issue Date: December 29, 2009 : RECONSIDERATION OF  
Application No. 10/617,452 : PATENT TERM ADJUSTMENT  
Filed: July 11, 2003 : and  
Atty Docket No. SLU 4554.1 : NOTICE OF INTENT TO ISSUE  
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on February 26, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand five hundred and seventy-five (1575) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **one thousand five hundred seventy-four (1574)** days.

On petition, patentee requests that the Office add a "B" delay of one thousand two hundred sixty-eight (1,268) days. However, at the same time, patentee only requests an overall revised patent term adjustment of 1575 days substantially consistent with the calculation of the Office (which would add 1091 days of "B" delay). Like the Office's calculation patentee's calculation implicitly acknowledges that the "B" delay does not include any time consumed by continued examination under 35 U.S.C. 132(b).

However, patentee's calculation differs from the Office in that it does not exclude enough days for time consumed by continued

examination under 35 U.S.C. 132(b). As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on July 12, 2006 and ends on July 5, 2009, the day before the first RCE was filed, which amounts to 1090 days. See U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is increased by 1090 days to 1575 days. (The period of adjustment of 434 days entered at issuance for "B" delay has been removed and the period of adjustment of 1090 days has been entered).

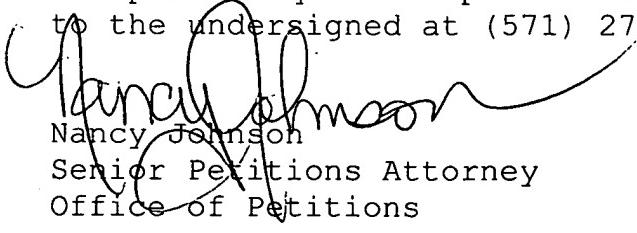
The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand five hundred seventy-four (1574) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

  
Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT : 7,638,228 B2  
DATED : December 29, 2009  
INVENTOR(S) : Minteer et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 918 days

Delete the phrase "by 918 days" and insert -- by 1574 days--